On the other hand the defence made no attempt to show that credits were not given or in respect of which particular cancelled policies credits were not given. When giving evidence the Managing Director of the first defendant (D.W.1) stated that the policies shown in the statement of account P2 from June 1980 onwards had been cancelled. Apart from that statement no evidence was produced to show that those policies had been cancelled. The burden of proving this lies on the defence. It is clear that under section 75 of the Road Traffic Ordinance 1958 immediately on the issue of every cover note the plaintiff company was on risk in respect of it. This is so notwithstanding the endorsement of the following statement on the insurance proposal form:—

"No liability undertaken until the proposal has been accepted and premium paid in full".

The stipulation that no liability is undertaken until premium is paid in full is void as being contrary to the provisions of section 76. This is the position in cases where cover notes are issued before full premia are collected. Parties cannot contract out of an Act of Parliament, that is to say they cannot include in their contract terms and conditions which are contrary to the provisions of the Act. If they do so such terms and conditions are void: *S.E.A. Housing Corporation Sdn. Bhd.* v. *Lee Poh Choo.*[2]

The rule is that if a stipulation in a contract be that the contract shall be void on the happening of an event which one or either of the parties can by his own act or omission bring about, then the party who by his own act or omission brings that event about, cannot be permitted either to insist upon the stipulation himself or to compel the other party who is blameless, to insist upon it, because to permit the blameable party to do either would be to permit him to take advantage of his own wrong to put an end to the contract, *vide* the judgment of Lord Atkinson in *New Zealand Shipping Company Ltd.* v. *S.D.A.E.C.D. France.*[3] In the present case the first defendant alleges that it had not obtained the consent of the plaintiff company to cease to operate at the address stated in clause 14(ii). Therefore the first defendant being the blameable party cannot be permitted to take advantage of his own wrong in ceasing to operate at that address without the consent of the plaintiff company, to put an end to the agency agreement.

This appeal is dismissed with costs here and in the courts below. The order of the High Court is affirmed. The deposit should be paid to the respondent (the plaintiff company) on account of taxed costs.

Appeal dismissed.

Solicitors: *Ho Thian Cheh & Co.; Matthew Thomas & Co.*

LEE TAI HOO & ANOR. v. LEE SWEE KEAT & ANOR.

[O.C.J. (Edgar Joseph Jr. J.) July 4, 1984]

[Penang — Civil Suit No. 259 of 1973]

Tort — Negligence — Liability admitted — Damages — Assessment of — Principles applied — Mitigating circumstances.

Road Traffic — Negligence — Liability admitted — Damages — Principles in assessing.

Damages — Negligent driving resulting in collision with shop-house — Irreparable damage — Liability admitted — Principles in assessing.

On June 5, 1972, the defendant negligently drove a lorry and caused it to collide into the plaintiffs' shophouses resulting in their becoming irreparably damaged. Liability for the negligence was admitted by the defendants. The basic issue before the court was the quantum of damages. The questions of law that were raised in the present suit were:

(1) What is the relevant date for assessment of damages;

(2) When are events occurring after the date of the tort relevant and when irrelevant in the assessment of damages;

(3) Does the plaintiffs' duty to mitigate in respect of tortious liability extend to the protection of the defendant from the effects of inflation.

Held: (1) damages ought to be assessed at the date of the judgment;

(2) all events are relevant up to the date of assessment of damages in court;

(3) the duty to mitigate does not operate to protect a defendant from the inflationary increases in damages;

(4) judgment for the first plaintiff in the sum of $80,366 with interest at the rate of 6% and for the second plaintiff in the sum of $25,429 with interest at the rate of 6%.

[*Editorial Note:* The defendants appealed to the Federal Court against the judgment of Edgar Joseph Jr. J. (Federal Court Civil Appeal No. 221 of 1984). The Supreme Court (Abdul Hamid C.J. (Malaya), Mohamed Azmi and Syed Agil Barakbah S.C. JJ.) upheld all points of law decided in the court below. However, (a) it varied the award for interest from 6% to 8% in favour of both plaintiffs from the date of judgment to the date of payment, (b) it set aside the award of $5,616.00 for loss of 1,872 sq. ft.

of land occasioned by Local Authority requirements for setback and a backlane as condition for rebuilding made in favour of the first plaintiff. The ground for this was because there was evidence that the first plaintiff would still remain owner of this portion of land even though its use would have to be surrendered as a condition for approval of plans for rebuilding. We reproduce below under Appendix A, the Order of the Supreme Court dated November 20, 1985.]

Cases referred to:

(1) *Asamera Oil Corp. Ltd.* v. *Sea Oil & General Corp.* (1978) 89 D.L.R. (3d) 1, 31.
(2) *Philips* v. *Ward* [1956] 1 W.L.R. 471.
(3) *Dodd Properties* v. *Canterbury City Council* [1980] 1 W.L.R. 433.
(4) *Sanders* v. *Kentish & Hawksley* (1799) 8 Term Rep. 162; 101 E.R. 1323.
(5) *Mitchell* v. *Mulholland* [1972] 1 Q.B. 65, 83.
(6) *Miliangos* v. *George Frank (Textiles) Ltd.* [1976] A.C. 443.
(7) *West Midland Baptist Association* v. *Birmingham Corp.* [1970] A.C. 874, 904.
(8) *Cookson* v. *Knowles* [1977] Q.B. 913.
(9) *Bullfa and Merthyr Dare Steam Collieries (1891) Limited* v. *Pontypridd Waterworks Company* [1903] A.C: 426.
(10) *Stene* v. *Evans* (1958) 14 D.L.R. (2d) 73.
(11) *Long* v. *Thessen* (1968) 65 W.W.R. 577.
(12) *Baker* v. *Willoughby* [1970] A.C. 467.
(13) *Jobling* v. *Associated Dairies* [1980] 3 W.L.R. 704.
(14) *Moore* v. *Der Ltd.* [1971] 1 W.L.R. 1476.
(15) *Darbishire* v. *Warran* [1963] 1 W.L.R. 1067.
(16) *Martindale* v. *Duncan* [1973] 1 W.L.R. 574.
(17) *Eley* v. *Bedford* [1972] 1 Q.B. 155.
(18) *Clippens Oil Co.* v. *Edinburgh and District Water Trustees* [1907] A.C. 291, 303.
(19) *Wroth* v. *Tyler* [1974] Ch. 30, 57.
(20) *Jewelowski* v. *Propp* [1944] K.B. 510, 511.
(21) *Sachs* v. *Miklos* [1948] 2 K.B. 23.
(22) *Livingstone* v. *The Rawyards Coal Co.* (1880) 5 App. Cas. 25, 39.
(23) *The Gazelle* 166 E.R. 759, 760.
(24) *Harbutt's "Plasticine" Ltd.* v. *Wayne Tank and Pump Co. Ltd.* [1970] 1 Q.B. 447, 468, 472 to 473, 476.
(25) *Bacon* v. *Cooper* [1982] 1 All E.R. 397.

CIVIL SUIT.

R. J. Manecksha (*S.J.D. Mathuram* with him) for the plaintiffs.

S. Thillaimuthu for the defendants.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: In the Law of Tort, what is the relevant date for the assessment of damages: Is it the date when the damage or loss was suffered or the date of judgment? When are events occurring after the date of the tort relevant and when irrelevant in the assessment of damages? Does the plaintiff's duty to mitigate in respect of tortious liability extend to the protection of the defendant from the effects of inflation? These are the principal questions of law arising on this suit in which both the plaintiffs claim that as long ago as June 5, 1972 the defendant driver so negligently drove a lorry that he caused it to collide into their two respective shophouses (which for brevity and convenience I shall refer to as "premises 146 and 145" respectively) resulting in their becoming irreparably damaged. Liability having been admitted only a few days before the trial, the basic issue which arose for decision was the quantum of damages.

It is elementary that in every case where damages are in issue the twin questions involved are:

First, "What happened?" or, more specifically, "what damage has the plaintiff suffered?" The answer to this question will result in damages being *quantified.*

Second, "How much is the damage worth in terms of money?" or, more specifically, "What is the appropriate monetary compensation?" The answer to this question will result in the damages being *assessed.*

On the question, what is the relevant date for the assessment of damages, there is a choice of two alternative approaches arising from the inevitable delay between the defendant's wrongful act and the assessment of damages at the trial.

The first alternative is that since the plaintiff incurs a loss at or about the time of the defendant's wrongful act the duty of the Court is to put the plaintiff in the position he would have occupied had the defendant paid the compensation at the first available opportunity having regard to the circumstances. In this way, an award is made of the loss incurred by the plaintiff at the time of the wrongful act or, shortly thereafter, with interest until the time of payment. The plaintiff's claim is thus said to crystallise: (see *Asamera Oil Corp. Ltd.* v. *Sea Oil & General Corp.*[1]) at the time of the loss or shortly afterwards, any delays thereafter affecting only the amount of interest.

The other alternative approach is that the Court makes a present (*i.e.*, judgment date) assessment of the plaintiff's loss regard being had to all that is then known.

Judicial opinion in England has changed sharp-

ly as to the date by reference to which damages are to be measured as I shall now demonstrate.

In *Philips* v. *Ward*,[2] the plaintiff wishing to buy a warehouse engaged the defendants, a surveyor, to report to him as to its condition. The defendant negligently failed to mention in his report that the timber in the house was defective and the plaintiff, relying on it, made the purchase. The Court awarded damages equivalent to the difference in value between the value of the house in its actual state and that described in the defendant's report, Lord Denning, L.J. (as he then was) stated categorically:

"The general principle of English Law is that damages must be assessed as at the date the damage occurs which is usually the same day as the cause of action arises, but may be later."

However, when it is recognised that there damages could not have been assessed at any date other than the date of the breach, Lord Denning's remarks lose much of their force. Moreover, in *Dodd Properties* v. *Canterbury City Council*[3] the Court of Appeal disapproved of Lord Denning's statement. In that case, the plaintiff whose garage had been damaged by defendant's building works recovered damages based on what it would cost to repair the premises.

Since *Dodd's case*, there has been a wealth of authority to support the proposition that, generally, damages ought to be assessed at the date of the judgment, unless they are greater if assessed at the date of the tort: (see *Sanders* v. *Kentish & Hawksley*[4]).

My choice of cases is as follows:

In *Mitchell* v. *Mulholland*[5] Widgery L.J. (as he then was) said:

"No one disputes that an award of damages must reflect the value of the pound sterling at the date of the award."

In *Miliangos* v. *Frank (Textiles) Ltd.*,[6] Lord Wilberforce said:

"Lord Reid thought in the *West Midland Baptist (Trust Association*, case that it was proper to examine a judge-made rule of law based on an assumption of fact (as to the stability of money) when the rule was formulated but which was no longer true and which in many cases caused serious injustice. So, in that case the House selected a new date and did not think it necessary or right to wait for legislation and I would not think it necessary or right here."

Apart from authority, it would appear that in principle, if damages are assessed at the date of the tort, this could often result in injustice because it would fail to restore the plaintiff to the position he occupied prior to its commission. "What justification can there be," said Lord Morris in *West Midland Baptist Association* v. *Birmingham Corp.*,[7] "for taking an out-of-date valuation? The word 'compensation' would be a mockery if what was paid was something which did not compensate."

Again, having regard to modern economic trends, it is always foreseeable that the cost of repairs or reimbursement will increase, *i.e.*, that inflation will occur.

In *Miliangos* v. *George Frank (Textiles) Ltd.* (*supra*), Lord Wilberforce said, at page 468,

"It is for the courts, or for arbitrators, to work out a solution in each case best adapted to giving the injured plaintiff that amount in damages which will most fairly compensate him for the wrong which he has suffered."

Similarly, in *Cookson* v. *Knowles*,[8] the Court of Appeal in England refused to follow one of its earlier decisions on the ground that "at the time of *Jefford* v. *Gee* inflation did not stare us in the face. The Court then did not have continuing inflation in mind and its effects on awards."

My conclusion, as regards this part of the case is, that there is a preponderance of authority for the proposition that generally, damages ought to be assessed at the date of judgment and I so hold. I might make the observation that the rule of crystallisation of damages at the date of the tort or, when damage resulting therefrom occurs, has now been consumed by the exceptions thereto.

I now turn to consider the question how far are events occurring after the date of the tort relevant in the assessment of damages. This is a matter of major importance because of the fall in the purchasing power of money due to raging inflation.

The authority usually cited in support of the proposition that all events are relevant up to the date of assessment of damages in Court is *Bwllfa and Merthyr Dare Steam Collieries (1891) Limited* v. *Pontypridd Waterworks Company*[9] where Lord Macnaghten asked:

"Why should he [the arbitrator] listen to conjecture on a matter which has become an accomplished fact? Why should he guess when he can calculate? With the light before him, why should he shut his eyes and grope in the dark?"

Clearly, as a matter of logic, all supervening events are relevant if they indicate that a loss has been reduced, for example, where a plaintiff claim-

ing damages for wrongful dismissal has found alternative employment.

Conversely, they are relevant if they tend to inflate the damages, for example, where consequential damage to interest flows naturally from damage to another interest.

And, again, they are relevant if they show that the loss the plaintiff suffered would, quite apart from defendant's wrong doing, have been sustained any way; for example, the defendant causes hurt to the plaintiff's foot and, in a wholly unconnected event, the plaintiff suffers the loss of that leg by the act or omission of another defendant. The ultra legalistic argument, based on principles of causation, would be that neither wrongdoer should be liable since each could assert that the other would in any case have caused the loss. To overcome such an argument, Courts have held that in a suit against the first wrongdoer damages are to be determined as if the assessment had taken place the day before the second wrongful act. However, since the second wrongdoer will not be liable save for additional injury sustained by an already injured person, it would appear that the first wrongdoer would be solely liable: (see *Stene* v. *Evans*[10]; *Long* v. *Thessen*[11] ; *Baker* v. *Willoughby*[12]).

Different considerations would apply if the second injury is caused by disease or by a non-tortious event; here, the damages would have to be reduced applying the general rule that all events up to the date of assessment are relevant: (see *Jobling* v. *Associated Dairies*[13]).

Turning to the question of mitigation, it is fundamental that this issue calls for determination only after questions of causation, foreseeability and remoteness have been answered in favour of the plaintiff. At that stage, the precise question will be: Could the extent of the damages have been avoided and, if so, should a reasonable plaintiff have taken the necessary avoiding steps? The onus of proving that the plaintiff ought to have taken the necessary mitigating steps is on the defendant: (see *McGregor* on Damages, 14th ed. p. 154). In areas of doubt, therefore, the benefit thereof must go to the plaintiff since, as between the aggrieved plaintiff and the defendant wrongdoer, it is only right and fair that the latter should bear the loss. "The scales should move heavily in favour of the innocent party as against the wrongdoer" per Megaw L.J. in *Dodd's case* (*supra*) at page 452.

The plaintiff's duty to mitigate is to act reasonably to prevent avoidable financial detriment. If he fails in this, he is precluded from recovering the loss resulting thereby. In cases such as the present, the paramount consideration will be, what was the reasonable step which each plaintiff ought to have taken at the time when faced with the problem of deciding whether to reinstate or to repair prior to the trial.

Again, the duty to mitigate does not arise if mitigation would cause the plaintiff financial detriment which in relation to the loss which could be avoided is significant: (see *Moore* v. *Der Ltd.*[14]). This is understandable as the main object underlying the principle of mitigation is the extravagance of the plaintiff: *Darbishire* v. *Warran.*[15]

Whether the plaintiffs in this case were under a duty to mitigate must therefore be a subjective question; their personal circumstances being most material. To illustrate, I would refer to *Martindale* v. *Duncan*[16] where the Court had referred to the plaintiff's position vis-a-vis his own insurance company. Similarly, in *Eley* v. *Bedford*[17] the plaintiff's ignorance of availability of social benefits was treated as relevant in determining whether she had acted reasonably in failing to mitigate a loss by applying for benefits. Again, a plaintiff is not required to mitigate if this is beyond his financial means: (see *Clippens Oil Co.* v. *Edinburgh and District Water Trustees*[18]; *Wroth* v. *Tyler*[19]).

It is with the above principles in mind that I now turn to the facts relative to the individual plaintiffs.

As to the First Plaintiff:

In the case of this plaintiff, her shop-house being premises 146, stood on land in area 5,523 sq. ft. At the time of the collision it was owned by her father and used for business and residential purposes. Some time after the collision she had become the owner and did submit plans for repairs to the Local Authority but these were rejected because the premises were in a dangerous condition (see evidence of P.W.4).

However, she can rebuild but subject to the following conditions imposed by the Local Authority:

a) a building set-back of 106' from the centre of the road;

b) water main and filter-bed to be provided;

c) a further 20' back lane for the proposed new building.

The question which arises here is: where there is no actual extravagance but the plaintiff has delayed reinstatement until after judgment can it be said that this attracts the operation of the mitigation principle? The *dictum* of Romer L.J. in *Philips* v. *Ward* (*supra*) shows that the plaintiff ought to mitigate against the effects of inflation but this pronouncement has not stood unchallenged in subsequent cases to which I shall now refer.

In *Moore* v. *D.E.R.* (*supra*), the plaintiff's eighteen month-old Rover car was involved in a collision caused by the negligence of the defendant and, as a result, became a total wreck. He could have bought a second-hand Rover car similar to that he had owned within two to three weeks. However, he did not do so but instead hired a substitute Rover for eighteen weeks by which time a new Rover was available. The reason why he did this was because it was his practice to change his cars once in two years. It was held that he had acted reasonably and therefore was not obliged to buy a car for six months as this was likely to result in a loss to him on resale.

In *Jewelowski* v. *Propp,*[20] Lewis J. said that a plaintiff "cannot be called upon to spend money to minimise the damages" since that "would be going far beyond the rule that the plaintiff must minimise damages."

Sachs v. *Miklos*[21] was an action for conversion of furniture. After the conversion the price of furniture rose. The Court held that if the defendant converts the plaintiff's furniture and keeps the money then the plaintiff is entitled to damages according to its value at the date of judgment.

Other authorities which merit reading, in this context, are *West Midland Baptist Association* v. *Birmingham Corp.* and *Wroth* v. *Tyler* (*supra*).

I would therefore answer the question posed, as regards this part of the case, by saying that when there has been no actual extravagance but the plaintiff has delayed reinstatement until after judgment then, generally, this will not attract the operation of the mitigation principle.

It is important to keep in mind that the defendants in this case did not admit liability until a few days before the hearing. In many cases, on this ground alone, the plaintiffs would be justified in postponing repairs or reinstatement until after judgment: see *Dodd's case* (*supra*). Had the defendants admitted liability soon after the collision, this would have cut their losses.

On the other hand, this plaintiff was only fourteen years old at the time of the collision when premises 146 were left to her by her father. Consequently, it seems to me that she had considerable justification for postponing reinstatement until final judgment. It is settled law that a defendant must take his victim as he finds him: (see *Livingstone* v. *The Rawyards Coal Co.*[22]). In any event, the duty to mitigate does not operate to protect a defendant from the inflationary increases in damages.

The next question is: should a deduction be made from any award the Court may make for betterment since any new building must be provided with piped water and modern sanitation in accordance with Local Authority requirements. I agree that no such deduction should be made since contribution only arises where there is some contributory negligence on the plaintiff's part (see *The Gazelle*[23] ; *Harbutt's "Plasticine" Ltd.* v. *Wayne Tank and Pump Co. Ltd.*[24]). Here, there has been nothing of the sort.

Furthermore, it was submitted, and I agree, that it would be impracticable for plaintiffs to rebuild according to the state of the building prior to the collision.

Conclusion :

Expert evidence before me establishes the value of premises 146 in 1972 at $24,000/- but, by 1982, this had risen to $72,000/-. Having found, as I do, that this plaintiff was under no duty to reinstate in 1972, I must find that she is entitled to damages equivalent to the cost of a new building today, which I shall take as $72,000/-, applying the 1982 value.

In addition, this plaintiff stands to lose 1872 sq.ft. of land because of Local Authority requirements for set-back and for a back lane. The value of this land, according to D.W.1, was $3/- per sq. ft. in 1982. If so, this plaintiff has sustained a further loss of $5,616/-, that is to say, 1,872 x 3. She would also have to incur an estimated expense of $2,750/- for demolishing the remains of premises 146. I consider she is also entitled to an award for this sum.

Summing up, therefore, there will be judgment for the first plaintiff as follows:

$72,000/=	being present estimated value of a new shophouse similar to premises 146.
5,616/=	being loss of 1872 sq.ft. of land @ $3/= per sq.ft.;
2,750/=	being estimated cost of demolition of remains of premises 146.
Total : $80,366/=	

The above total sum will attract interest at the rate of six per cent. from date of service of writ to payment.

As to the Second Plaintiff :

In the case of this plaintiff, he was the owner of premises 145 which stood on land in area 2,257 sq.ft. At the time of the collision he rented part of it for $25/- p.m. It was then registered in his name and that of his mother in equal shares but, by consent, he was allowed to keep the whole of the rental. Subsequently, however, his mother transferred her half share to him so that he became the owner of the whole.

This plaintiff also testified that he had intended to, but did not submit plans for repairs or rebuilding, because he did not have the money to do so. In fact, he would not have been allowed to repair premises 145 which were and are in a dangerous condition. Nor would he be allowed to rebuild considering the land concerned has a frontage of only ten feet, is a long and narrow strip, held under Mukim Grant and is affected by road widening proposals. I agree the probabilities are that this land is not capable of redevelopment by itself though it could be developed along with the adjoining lot. On this basis I accept the evidence of D.W.1 that the value of this land today, using a gross area of 2257 sq.ft., is $3/- per sq.ft. This amounts to $6,771/-.

Conclusion :

According to the expert evidence, had premises 145 not been damaged in the collision, it would have had a value today of $6,100/- and the land on which it stood, being in area 2,257 sq.ft., a value today of $3/- per sq.ft., that is to say, $6,771/-. Arithmetically, this means that premises and land today would be worth $12,871/-. But, would such an assessment be realistic? I do not think so. It was argued, and I agree, that the correct approach would be to give compensation by making an award equivalent to the value of a similar new shophouse as at today: (see *Bacon* v. *Cooper*[25]), otherwise any compensation awarded would be a mockery, as it would cease to compensate (per Lord Morris in *West Midland Baptist Association* v. *Birmingham Corp.* cited *supra*). On the basis of the expert's report, D7, which I accept, this would be $30,500/-, and I so find. There must, however, be a deduction from this sum of $6,771/- being the present value of the land.

Next, as in the case of the first plaintiff, the second plaintiff, too, will incur the cost of demolishing the remains of premises 145 estimated at $1,250/-. This, I hold, he is entitled to recover, and I so order. However, I make no award in respect of loss of rental since this has not been claimed.

Summing up, therefore, there will be judgment for the second plaintiff, as follows:

$30,500/-	being present estimated value of a similar shophouse to premises 145 (inclusive of land on which it once stood);
1,250/-	being estimated cost to be incurred for demolishing remains of premises 145;
450/-	being agreed Special Damages.
Total : $32,200/-	
Less : 6,771/-	being present value of land which he still retains.
$25,429/-	

The sum of $23,729/- being, present value of similar new shophouse less present value of land, will attract interest at the rate of six per cent per annum from date of service of writ to date of payment.

The defendants must also pay to the plaintiffs the costs of this action.

It follows, therefore, that the submission of counsel for the defendants, the pith and substance of which was, that the true measure of damages should be the difference in the value of premises 145 and 146 immediately before and after the date of collision, did not commend itself to me. I can quickly dispose of it by saying that it fails to take into account or give proper weight, either to the

authorities cited or the principles enunciated therein which I favour.

Before leaving this case, I might mention that quite a few of the authorities referred to in this judgment were not cited by either counsel but I felt obliged to do so as they were, in my opinion, essential for the proper clarification and determination of the factual and legal issues in the case.

Order accordingly.

Solicitors: *Mathuram & Co.; Thillaimuthu & Phock Kin.*

Appendix A

"CORAM: THE HONOURABLE TAN SRI DATO' ABDUL HAMID BIN HJ. OMAR, CHIEF JUSTICE MALAYA THE HONOURABLE TAN SRI DATO' HJ. MOHD AZMI BIN DATO' HJ. KAMARUDDIN, S.C.J. THE HONOURABLE DATUK SYED AGIL BIN SYED HASSAN BARAKBAH, S.C.J.

ORDER

THIS APPEAL coming on for hearing on the 20th day of November, 1985 in the presence of Mr S. Thillaimuthu of counsel for the Appellants abovenamed and Mr R.J. Manecksha (Mr S.J.D. MATHURAM with him) of counsel for the Respondents abovenamed *AND UPON READING* the record of appeal filed herein *AND UPON HEARING* counsel as aforesaid *IT IS ORDERED* that the Appellants' appeal against the Amended Order dated the 4th day of July, 1984 of the Honourable Edgar Joseph Jr. J. awarding the first-named Respondent the sum of $5,616/- for loss of 1872 square feet of land valued at $3/- per square foot and interest at 6% per annum calculated from the date of service of the writ to date of payment on total sum of $80,366/- be and is hereby set aside and *IT IS ALSO ORDERED* that the Appellants do pay this Respondent the sum of $74,750.00 with interest thereon at 8% per annum calculated from the date of judgment to the date of payment, *AND IT IS FURTHER ORDERED* that the said order of the Honourable Edgar Joseph Jr, J. awarding the second-named Respondent the sum of $23,729/- being the value of a similar new shop-house, the further sum of $1,250/- being the costs of demolition charges and agreed special damages of $450/- do stand but that the award of interest calculated at 6% per annum on the sum of $23,729/- from the date of service of the writ to date of payment be and is hereby set aside and this Respondent be allowed interest on the total sum of $25,429/- calculated at 8% per annum from the date of judgment to date of payment *AND IT IS LASTLY ORDERED* that the costs of this appeal be taxed and the Appellants do pay the Respondents one-half of such taxed costs and that the sum of $500/- deposited by the Appellants into Court as security for costs of the appeal be paid out to the Respondent on account of taxed costs.

GIVEN under my hand and the seal of the Court this 20th day of November, 1985.

SGD. SOO AI LIN
SENIOR ASSISTANT REGISTRAR,
SUPREME COURT, MALAYSIA,
KUALA LUMPUR."

SENG LOONG TRADING CO. v. ANGEL DEPARTMENT STORES SDN. BHD.

[O.C.J. (Gunn Chit Tuan J.) July 23, 1985, August 21, 1985, October 29, 1985, November 12, 1985]

[Kuala Lumpur – Civil Suit No. C3266 of 1985]

Practice and Procedure – Writ of Summons and service – Application to set aside – Whether time limited for appearance is irregular – R.H.C. 1980, O.12 r.4.

The defendant applied by Summons-in-Chambers for an order to set aside a Writ of Summons and service thereof on the ground that the time limited for appearance within eight days was irregular and did not comply with Order 12 rule 4 of the Rules of the High Court 1980. The plaintiff referred to the meaning of local jurisdiction in section 3 of the Courts of Judicature Act 1964 and contended that the time limited for appearance was regular because the expression "local jurisdiction" of each High Court in Malaya in Order 12 rule 4(a) of the Rules of the High Court 1980 means the territory comprised in the States of Malaya including, in this case, the State of Penang where the defendant is carrying on its principal business.

Held: (1) the expression "local jurisdiction" is not defined in Order 12 rule 4 and one cannot for the purpose of construing the provisions of the Rules of the High Court 1980, refer to the meaning assigned to that expression in the Courts of Judicature Act, 1964;

(2) for purposes of Order 12 rule 4 of the Rules of the High Court 1980, the expression "local jurisdiction" of this High Court in Malaya means the territory comprised in the State of Selangor and the Federal Territory of Kuala Lumpur, and cannot include the other states of West Malaysia;

(3) the said Writ and the service thereof shall be set aside with liberty to the plaintiff to file a fresh suit.

CIVIL SUIT.

N. H. Wong for the plaintiff.

P. C. Low (*Ang San Hai* with him) for the defendant.

Cur. Adv Vult.

Gunn Chit Tuan J.: Angel Department Stores Sdn. Bhd. (the defendant) applied by Summons-in-Chambers for an order to set aside a Writ of Summons and the service thereof on the ground that the time limited for appearance within eight days was irregular and did not comply with Order 12 rule 4 of the Rules of the High Court, 1980, which is as follows:–

"4. References in these rules to the time limited for appearing are references:–

(a) in the case of a Writ served within the local jurisdiction of each High Court in Malaya, to 8 days and